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10/542,443

07/15/2005

Fabrice Bonacci

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

BLATT, ERIC D

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

04/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/542,443 | Applicant(s) BONACCI, FABRICE | |
| | Examiner Eric Blatt | Art Unit 3734 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites that that the cannula "extends over a length 50% greater than the total length of the duct." Applicant's specification and figures suggest that the cannula extends over a length greater than 50% of the total length of the duct. Furthermore, since the duct extends the length of the body of the device and the cannula extends over only a portion of the length of the body, under the Examiner's present understanding of the apparatus, it seems impossible that the cannula should extend over a length greater than the total length of the duct. For present purposes of examination, claim 3 will be interpreted to recite that the cannula "extends over a length greater than 50% of 50% greater than the total length of the duct."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3731

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Wenning (EP 0807447).

Regarding claim 1, Wenning discloses a guide insertion device (Figures 1-4) suitable for the insertion of a guide into a check valve made of a surgical material comprising a body 1 delimiting a duct (passage through body 1) for guiding the guide. The duct is open at its two ends. The body has, from a first end of the duct, a slim cannula (extending from distal tip 5 to the distal end of the tapered portion 12) extending along the axis of the duct and suitable for being engaged through the check valve. The body 1 has a slot 11 extending longitudinally along the length of the duct from one end to the other of this duct and opening into the duct along its whole length. Wenning does not disclose that outer diameter of the body and the diameter of the duct increase progressively from the first end to the second end. Wenning teaches that a tapered shape aids in funneling a flexible member through a narrow aperture. It would have been obvious to one of ordinary skill in the art at the time of the invention to have the diameters of the body and duct increase progressively from the first end to the second end such that the body is generally frustoconical in order to better aid in funneling a flexible member through the duct and into a narrow aperture as taught by Wenning.

Regarding claim 2, the body is formed of a single monobloc piece. Alternatively, it would have been obvious to one of ordinary skill in the art to make the body formed of a single monobloc piece since it has been held that it is within the knowledge of one of ordinary skill in the art to make a separate construction integral.

Regarding claim 3, the cannula extends over a length greater than 50% of the total length of the duct.

Regarding claim 4, the body 1 comprises around the second end of the duct a divergent frustoconical wall 12 axially extending said cannula.

Regarding claims 5 and 6, said frustoconical wall 12 internally delimits a centering cone. It would have been obvious to one of ordinary skill in the art at the time of the invention to have the maximal diameter of the centering cone lie between 1.5 and five times its minimal diameter, or between 3 and 8 times the minimal diameter of the duct, since it has been held that it is within the knowledge of one of ordinary skill in the art to determine an optimal range for the functionality of a device.

Regarding claims 7-13, it would have been obvious to one of ordinary skill in the art to modify the apparatus of Wenning by providing the elements such that they have the dimensions as claimed since it has been held that it is within the knowledge of one of ordinary skill in the art to determine an optimal range for the functionality of a device.

Regarding claim 14, Benning does not disclose that there are internal bevels running along the inner surface of the slot 11. Benning teaches that a funneled shape aids in guiding a flexible member through a narrow aperture. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Benning by providing beveled surfaces along the inner surface of the slot 11 to aid in guiding a flexible member through the narrow slot 11.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric Blatt
571-272-9735
/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731